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SEXUAL MISCONDUCT CARRIES SEVERE PENALTIES THAT CAN FOLLOW OFFENDERS FOR LIFE

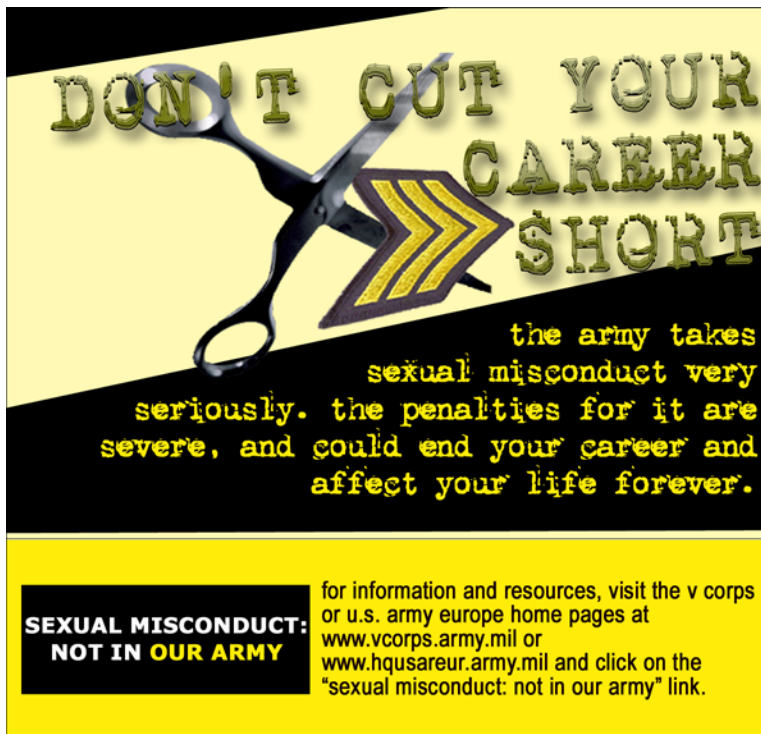
By Spc. Kristopher Joseph
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HEIDELBERG, Germany — While it is well known that the Army has “zero tolerance” policy toward sexual misconduct, many Soldiers may still not be aware of the exact nature of criminal sexual misconduct or the severe and career-ending penalties they can suffer for it.

Maj. Brad Huestis, chief of military justice in the V Corps Office of the Staff Judge Advocate, outlined the forms of criminal sexual misconduct and the maximum punishment outlined by the Uniform Code of Military Justice for conviction for those crimes:

- Rape and forcible sodomy (oral or anal sex) – Confinement for life.
- Assault with intent to commit rape – 20 years confinement.
- Carnal knowledge (sexual intercourse with someone under 16 years of age) – 20 years confinement, or life confinement if the victim is under 12 years of age.
- Assault with intent to commit sodomy – 10 years confinement.
- Indecent act or liberties with a child under 16 years of age – 7 years confinement.
- Indecent assault and indecent acts with another – 5 years confinement.

A dishonorable discharge, reduction to the pay grade of E-1, and forfeiture of all pay and allowances is usually included with these convictions, the major said. If a combination of offenses occurs in single or multiple incidents, the accused will face the sum penalty of all the crimes for which he is found guilty, said Huestis. So, for example, if a Soldier is found guilty of indecent assault and assault with intent to commit sodomy, the maximum punishments could be combined for a total of 15 years confinement.



When a Soldier who has been convicted of a sex crime transitions to the civilian world, the major added, laws in the area where he chooses to reside may require him to register as a sex offender.

"With each individual case, we try to craft a

course of action that fits the crime," said Huestis. "Judges deal with sexual misconduct cases very seriously, because of the lasting effect and damage to the victim."

A question that is often raised with regard to misconduct is, at what point does an act "cross the line" and become a crime punishable under the UCMJ?

Using rape as an example, Huestis explained that the definition for rape in the UCMJ is "sexual intercourse by force and without consent." But "force" and "consent" are two areas that are not as simple to define as they sound, he added. Actual physical force is not the only way force can be established. Sexual harassment, intimidation or threats alone may be considered "constructive force," the major said. If the victim is asleep, unconscious or intoxicated, and incapable of consenting, the accused can still be found guilty.

Huestis recalled a case in which a drill sergeant was accused of raping a basic trainee. Although there was no evidence of physical force and it appeared that consent was given, the accused was found guilty because he abused his position to force consent and commit the act.

"Constructive force really pushes the envelope of the definition of rape," said Huestis.

"If you are not 100 percent positive on the question of consent, you've left the door open to get charged," said Huestis.

"Most of the cases we receive usually occur between two people who know each other," he said, adding that alcohol is almost always involved.

But intoxication cannot be used as a defense against sexual misconduct, the major explained, and it usually compounds the problems of an accused Soldier.

"Alcohol is actually a double-edged sword," said Huestis, noting that voluntary intoxication almost always adds an extra strike against the accused during a court martial.

One thing about misconduct that might surprise those who are not familiar with the UCMJ is the fact that sexual harassment is not listed under any of its punitive or general articles.

Huestis said sexual harassment cases are normally handled at the company commander level with non-judicial punishment -- an Article 15. But he was quick to add that sexual harassment can lead to or compound other charges.

"When an allegation of sexual harassment is made, we look at the case and decide whether we can charge the accused with others sections of the UCMJ that have been violated, such as maltreatment, indecent language or indecent exposure. As an example, Huestis described a case where a unit charged a Soldier with sexual harassment for sending e-mails and messages containing sexual content to a fellow Soldier. The sender could not be convicted of sexual harassment, the major said, but because the messages were explicitly sexual, the Soldier was found guilty of indecent language under the UCMJ.

"Just because it flies under the UCMJ, you still put your career at risk," said Huestis.

For more information, Soldiers can contact their SJA or Equal Opportunity offices, or check out the web site of the U.S. Army Europe's "Sexual Misconduct: Not In Our Army" program by visiting either the V Corps or USAREUR home pages and clicking on the link for the program.

